IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS TYLER DIVISION

TROY EDWARD HOLT §

v. § CIVIL ACTION NO. 6:09cv284

FEDERAL BUREAU OF PRISONS §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE AND ENTERING FINAL JUDGMENT

The Petitioner Troy Holt, a prisoner currently confined in the Texas Department of Criminal Justice, Correctional Institutions Division proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2241 complaining of the computation of his federal sentence by the Bureau of Prisons. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Holt asserts that he has been denied pre-sentence detention credits on his federal sentence, to which he says that he is entitled under 18 U.S.C. §3585(b). Holt argues that his sentence computation begins on the date of sentencing, while it should begin on the date of arrest.

The Magistrate Judge ordered the Respondent to answer the petition. In this answer, the Respondent says that Holt is serving a 24-month federal sentence for counterfeiting, running concurrently with the revocation of his parole from a 30-year Texas sentence for aggravated robbery. He is designated for service of his federal sentence in the Texas state penitentiary. Throughout his prosecution, the Respondent says, Holt was physically in the custody of the U.S. Marshals, but was in the "primary custody" of the State of Texas. The Respondent further says that Holt received credit for the pre-sentence time on his state sentence and thus is not entitled to have the same time credited

on his federal sentence. Holt filed a response to the answer arguing that he is entitled to the time credit because the state custody resulted from the commission of the federal offense.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the petition be dismissed. The Magistrate Judge cited 18 U.S.C. §3585(b) and stated that because the time which Holt seeks has been credited against another sentence, he cannot get credit for the same time on his federal sentence.

A copy of this Report was sent to Holt's last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the district court of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. <u>Douglass v. United Services Automobile Association</u>, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in the case and the Report of the Magistrate Judge.

Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. Finally, it is

ORDERED that any and all other motions which may be pending in this cause are hereby DENIED.

So ORDERED and SIGNED this 5th day of April, 2010.

